



MILPITAS PLANNING COMMISSION STAFF REPORT

August 13, 2014

APPLICATION: **Odyssey Preschool, Conditional Use Permit No. UP14-0011 and Minor Site Development Permit No. MS14-0028**

A request for a Conditional Use Permit and Minor Site Development Permit to operate a preschool in an existing commercial building and to permit various building and site modifications.

RECOMMENDATION: **Staff recommends that the Planning Commission:**
Adopt Resolution No. 14-031 approving Conditional Use Permit No. UP14-0011 and Minor Site Development Permit No. MS14-0028 to operate a preschool in an existing commercial building and to permit various building and site modifications.

LOCATION:
Address/APN: 430 South Abel Street (APN: 86-10-006)
Area of City: Midtown Specific Plan Area

PEOPLE:
Project Applicant: Kevin Mattos, KMA Architecture
Consultant(s): Same as applicant
Property/Business Owner: Sanjay Prasanna
Project Planner: Tracy Tam, Planning Intern

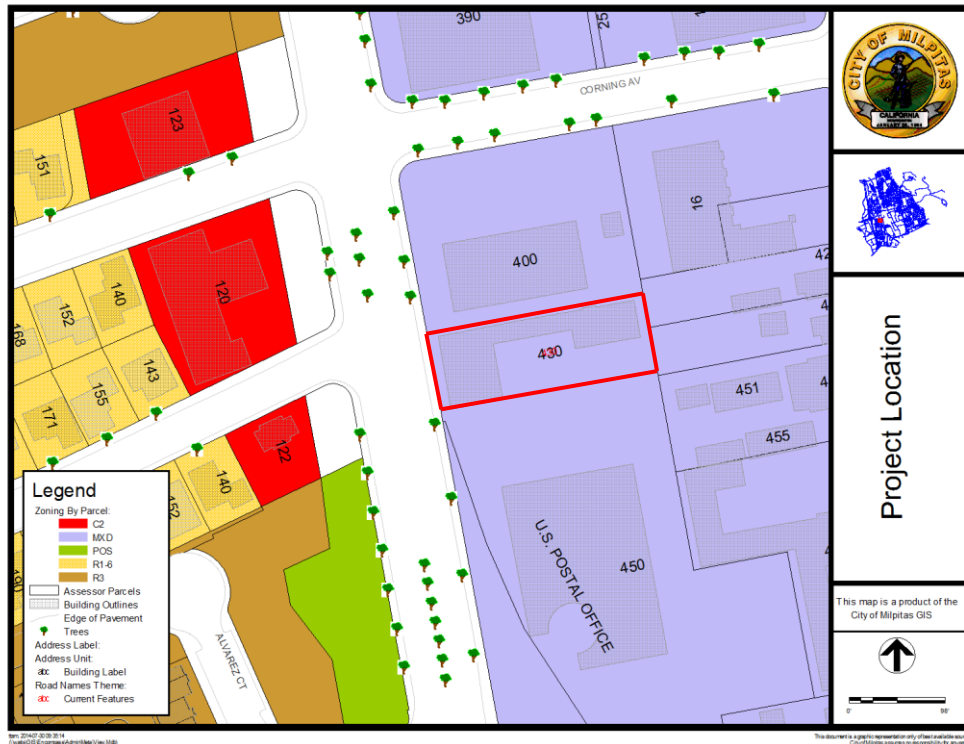
LAND USE:
General Plan Designation: Mixed Use (MXD)
Zoning District: Mixed Use (MXD)
Overlay District: Site and Architectural Overlay (-S)

ENVIRONMENTAL: Categorically Exempt from further environmental review pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the California Environmental Quality Act (CEQA).

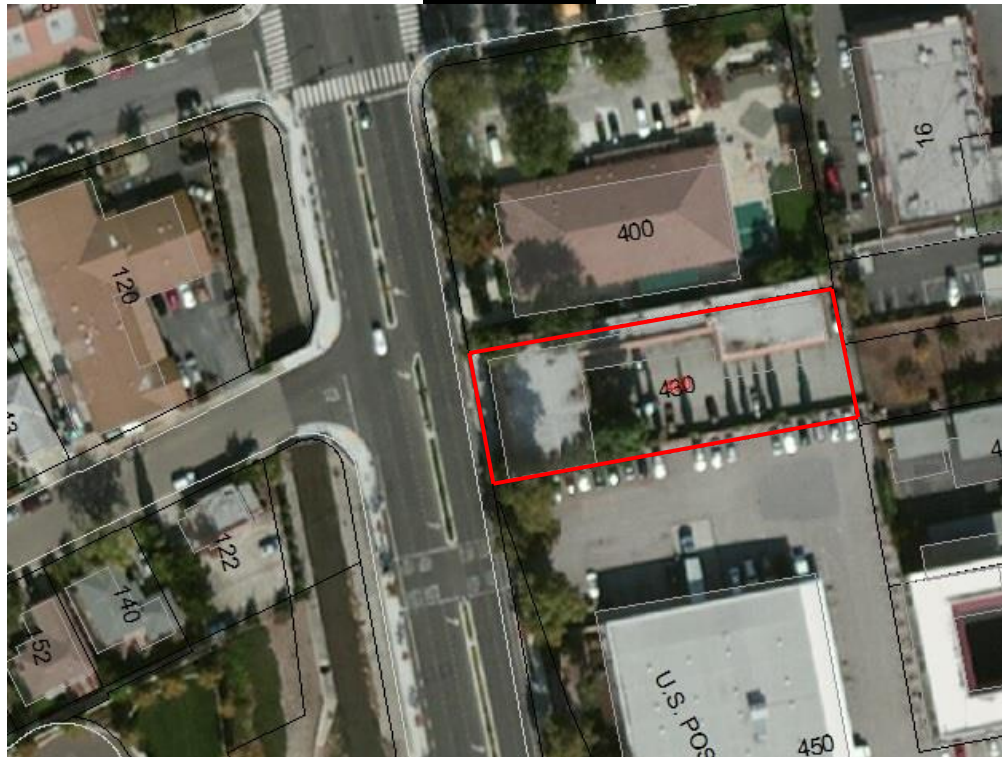
EXECUTIVE SUMMARY

The applicant is requesting a Conditional Use Permit (CUP) and a Minor Site Development Permit to operate a preschool in an existing commercial building and to permit various building and site modifications. The Zoning District for this project is Mixed Use (MXD) and a preschool (contained within the definition of a Child Care Center) is a conditionally permitted use. The applicant is also requesting deviations from the development standards, which requires a CUP per Section XI-10-6.07 Exception to Standards in the Milpitas Zoning Code.

Map 1 **Project Location: 430 South Abel**



Map 2 **Project Site**



Additional Pictures



Front of existing commercial building



Rear of existing commercial building

BACKGROUND

History

On April 13, 1971, the Planning Commission approved an “S” Zone application with five (5) special conditions for a 6,058 square feet commercial building. The application included 31 parking spaces and a trash enclosure screened with a six (6) feet concrete block wall located at the rear of the parcel.

On April 10, 1973, the Planning Commission approved a directory sign for a medical-dental office.

Otherwise the building has been operated as a medical office for the last 40 years but has recently become vacant.

The Application

The following is a summary of the applicant’s request:

- *Conditional Use Permit:* To allow for a preschool in an existing commercial building in the Mixed Use (MXD) zoning district; to allow deviation from development standards, including the interior side setback requirement and orientation of the primary entrance; and, to allow alterations to an existing legal, non-conforming building.
- *Minor Site Development Permit:* To permit various building and site improvements.

PROJECT DESCRIPTION

Overview

This applicant is requesting a Conditional Use Permit to operate a preschool in an existing commercial building. A childcare use is conditionally permitted in the Mixed Use (MXD) zoning district. The project proposes a capacity of eighty-nine (89) children between six (6) months to four (4) years of age and hours of operation from 7:30AM to 6:30PM, Monday through Friday. The project will include infant, toddler and preschool programs. There will be a choice of full day attendance or only morning/afternoon attendance. The proposed drop off schedule and Statement of Operations is contained within Attachment C. Due to the existing legal, non-conforming status of the building, the applicant is also requesting deviations from the development standards for the MXD zoning district. The deviations include an existing interior side setback requirement of zero feet (0’-0”) where ten feet (10’-0”) is required and deviation from the orientation of the primary entrance.

The applicant is also requesting a Minor Site Development Permit for various building and site improvements. The Minor Site Development Permit includes removing approximately 700 square feet of building area, as well as the existing porte-cochere. It also includes a new roof, constructing new accessible ramps and wheelchair lift located at the front entrance, exterior lighting, a new wall along the property line, a new recessed entry, decorative paving, new landscaping, and adding a decorative metal arch at the driveway entrance.

Location and Context

The project site is located at 430 South Abel Street. Since the construction of the original building in 1971, there has not been major improvement to the site. The site contains one existing commercial building with seven (7) tenant spaces previously occupied by several medical and dental offices and clinics.

The project site is in the Mixed Use (MXD) zoning district within the Midtown Specific Plan Area. The parcels located to the north, south, and east are also zoned Mixed Use (MXD). The parcel located southwest is designated as Parks and Open Space (POS) and the parcels located directly west of the project site is zoned General Commercial (C2). A vicinity and location map of the subject site location are included on page two.

Within this general area, there are two other similar uses. Kindercare is located directly north of the project site at 400 South Abel and was approved by the Planning Commission on October 20, 1983. Kindercare was approved for 156 children between the ages of 2 years and 12 years old. The approved hours of operation are between 6:00AM to 6:30PM. The other similar use is Merryhill Preschool located at 123 Corning Avenue. The typical age of children entering this program are aged 2 to 5. The hours of operation are from 6:30AM to 6:00PM. The City has received no operational complaints regarding either of these two uses.

PROJECT ANALYSIS

General Plan and Zoning Conformance

General Plan

The General Plan designation for the project site is Mixed Use (MXD). This project conforms to the intent of the Mixed Use designation in that it provides a commercial service. The project is also consistent with the implementing policies of the General Plan Land Use Element to promote infill development, provide all possible community facilities, and encourage the establishment of day care facilities.

Midtown Specific Plan

This project is consistent with the Midtown Specific Plan in that it encourages the provision of childcare services to support the demand generated by employees and residents in the Midtown area.

Zoning Code

The Zoning designation for the project site is Mixed Use (MXD). The proposed child care facility is a conditionally permitted use in this zoning designation. The project conforms to the intent of the MXD zoning district in that it provides a commercial service. The project also conforms to the development standards set forth in the Milpitas Zoning Code, with the exception of the interior side setback requirement, which is legal non-conforming. The Project also conforms to the Non-Conforming Building Section of the Zoning Code in that a Conditional Use Permit is required for alterations to legal non-conforming buildings.

Milpitas Child Care Master Plan

The project is also consistent with the Milpitas Child Care Master Plan in that it promotes the development of new child care facilities within city limits and encourages new child care facilities to offer a variety of child care types in order to meet specific needs.

Development Standards

The table below demonstrates project compliance with the development standards of the Mixed Use (MXD) zoning district.

Table 1:
Summary of Development Standards

	Standard	Proposed	Complies?
<u>Setbacks</u> (Minimum)			
Front	8-15 feet	8 feet	Yes
Interior	10 feet	0 feet (existing)	<u>No</u>
Rear	10 feet	16 feet	Yes
<u>Building Orientation</u>	All buildings shall be oriented towards the street. Primary building entrances shall be oriented towards the street	Primary building entrance is oriented to the parking lot area.	<u>No</u>
<u>Floor Area Ratio</u> (Maximum)	0.75	0.29	Yes
<u>Building Height</u> (Maximum)	3 stories and 45 feet. If architectural elements are present, then 55 feet.	±13 feet	Yes
<u>Landscaping</u>	All required front and street setback areas shall be landscaped or paved to allow for outdoor seating, display of goods, or street furniture.	The front setback area is fully landscaped with various plants.	Yes

The project is consistent with the front and rear setback requirement, the Floor Area Ratio (FAR) requirement, the maximum building height, and the landscaping requirements. The project is consistent with the front and rear setback requirements because the front setback for the project is eight (8) feet and the rear setback is sixteen (16) feet. The project is also consistent with the FAR requirement in that it is below the maximum allowed on the subject site of 0.75. The project is consistent with the maximum building height allowed for this area because the structure stands at approximately thirteen (13) feet while the maximum building height is three

(3) stories or forty-five (45) feet. Lastly, the project is consistent with the landscaping requirement because the front setback area is proposed to be fully landscaped with various landscape materials

This project is not consistent with the interior setback requirement and the orientation of the primary building entrance.

The interior setback requirement for the MXD zoning district is ten (10) feet. However, the existing interior setback is zero (0) feet, as the existing building is on the east property line. The building was constructed prior to adoption of the Midtown Specific Plan and is considered legal non-conforming in regards to this setback.

The project is also not consistent with Section XI-10-6.04(D)(1)(c) of the Milpitas Zoning Code, in that the primary building entrance is not oriented towards the street. Due to the existing floor plan and operation of the proposed use, the project proposes the primary building entrance within the interior of the site facing the parking lot.

Staff supports the above mentioned deviations given the legal, non-conforming nature of the building, and based on the proposed operations of a child care center. The location of the parking lot provides a logical location for the primary entrance to the building. Any deviations from the development standards can be accommodated through a Conditional Use Permit, subject to Planning Commission approval per Section XI-10-6.07 (Exceptions to Standards) of the Milpitas Municipal Code.

Site & Architectural Design

The proposed changes to the building will greatly improve the overall aesthetics of the building and provide better visual aesthetics from the public street. The project proposes to demolish approximately 700 square feet of the building and the existing porte-cochere, patch and repair the existing roof, construct a new mansard roof to match existing, construct new accessible ramps and wheelchair lift, install exterior wall lights, replace the existing masonry fence, create a new recessed entry, add decorative paving to the driveway, improve the landscaped areas with new a new tree and landscaping, and add a decorated metal arch over the entryway.

The proposed changes to the building façade and project site will provide greater architectural interest. In particular, the decorative arch and pavers at the entryway will provide an inviting, comfortable atmosphere. Overall, the proposed changes will provide the building with an updated and refreshed appearance.

Landscaping

The proposed landscape plan (Attachment B) includes three types of trees, six types of shrubs, and three types of ground cover. The size of the trees will range from twenty-four (24”) inch box to fifteen (15) gallons. The proposed trees will provide the site with shading in the parking lot area. The size of the proposed shrubs will be five (5) gallons. The size of the proposed ground cover will be between one (1) gallon and five (5) gallons.

The landscape plan will improve the project site in that it will introduce new landscape area. The proposed landscaping along the south end of the property and the curbed planter adjacent to the preschool play area will provide visual interest with a break in material and texture.

Outdoor Play Area

The proposed outdoor play area is located towards the rear of the property and away from the public street. The proposed preschool play area is approximately 2,460 square feet and the infant/toddler play area is approximately 1,100 square feet. The proposed ground cover for both play areas is artificial turf. The proposed play areas are secured by a six foot (6'-0") tall metal picket fence with a black powder coat finish, as per the requirements outlined in Section XI-10-13.06 Child Care. Each proposed play area contains a playground structure. The applicant is also planning on hosting educational programs in the proposed play areas that teach the children about plant life.

Floor Plan

The proposed floor plan (Attachment B) illustrates an open floor plan indicated to better facilitate group activities (i.e. classes, circle time, indoor activities). The proposed floor plan also illustrates how the different age groups will have their own perspective play areas. It also illustrates bathroom facilities placed in each classroom for the children, bathroom facilities for the child care operators, a warming kitchen, various storage areas, a lobby area, a laundry room and an office. The proposed floor plan also increases the amount of natural lighting inside the classrooms by adding additional windows.

Off-Street Parking

The project meets its parking requirement. The table below demonstrates how the project is consistent with the off-street parking requirement for a Child Care use.

Table 2:
Off-Street Parking Requirement

	Standard	Proposed	Complies?
<u>Off-Street Parking</u>	1 per classroom or 1 per 500 square feet, whichever is greater. The loading and unloading requirement is one (1) parking space per six (6) children up to five (5) spaces and thereafter (1) space per ten (10) children. <u>Requirement: 22 parking spaces</u>	22 parking spaces	Yes

The project is in compliance with the off-street parking requirement in that it provides twenty-two (22) off-street parking spaces when twenty-two (22) off-street parking spaces are required. The parking requirement is based on one space per 500 square feet of building area. Based on an area of 5,268 square feet, eleven (11) parking spaces are required. In addition to the parking requirement based on square footage, there is also a requirement for loading and unloading. The site must also accommodate one (1) parking space per six (6) children up to five (5) spaces and

thereafter one (1) space per ten (10) children. Because the project proposes eight-nine (89) children, the project requires eleven (11) loading and unloading parking spaces.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit (Section XI-10-57.04(F))

- 1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;*

The proposed use for a child care facility will upgrade the existing property and will serve the community, and therefore will not be detrimental or injurious to the property or improvements in the vicinity of the property because it will be providing a service. The operation of the child care center will be in compliance with all local, state and federal regulations and therefore will not be detrimental or injurious to the public health, safety, and general welfare.

The existing building is considered a legal non-conforming structure because it does not meet the current development standards. When the building was originally constructed, it was built in compliance with land use and zoning laws at that time. The interior setback requirement for the MXD zoning district is ten (10) feet. However, the existing interior setback is zero (0) feet, as the existing building is on the east property line. The building was constructed prior to adoption of the Midtown Specific Plan and is considered legal non-conforming in regards to this setback.

The project is also not consistent with Section XI-10-6.04(D)(1)(c) of the Milpitas Zoning Code, in that the primary building entrance is not oriented towards the street. Due to the existing floor plan and operation of the proposed use, the project proposes the primary building entrance within the interior of the site facing the parking lot.

Staff supports the proposed deviations given the legal, non-conforming nature of the building, and based on the proposed operations of a child care center. The interior side setback deviation is an existing condition and has had no previous negative effects. The location of the parking lot provides a logical location for the primary entrance to the building. It will not affect adjacent properties because the project site will be enclosed with a six foot (6'-0") masonry wall. Any deviations from the development standards can be accommodated through a Conditional Use Permit, subject to Planning Commission approval per Section XI-10-6.07 (Exceptions to Standards) of the Milpitas Municipal Code.

- 2. The project is consistent with the Milpitas General Plan.*

The project is consistent with the General Plan, specifically:

- Policy 2.a I-2: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

The project is consistent with this finding because the proposed child care use is occupying an existing commercial building on the valley floor and not proposing to expand urban services into unincorporated areas. Deviations from the development standards are also consistent with this finding because the existing building is a legal non-conforming structure on an infill site. Allowing these deviations helps to promote infill development.

- Principle 2.d-G-1: Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.

The project is consistent with this finding because with the full implementation of the Midtown Specific Plan, higher densities and an increase of employment centers are expected in this area. With the increase in density and employment centers within this area, child care services will be needed to adequately serve the needs of the residents and employees. This project is anticipating the child care needs of this area.

- Policy 2.a-1-33: Encourage the establishment of day care facilities consistent with State standards, including the issuance of use permits for a large day care facilities where compatible with surrounding neighborhoods and commercial uses, particularly in public facilities such as community centers, churches, schools and in employment centers and large housing developments.

The project is consistent with this finding because the proposed child care use will be consistent with State standards because the child care operator must provide City staff with a copy of the license under the California Department of Social Services, Community Care Licensing Division.

3. The project is consistent with the Milpitas Zoning Ordinance.

The project site is zoned Mixed Use and is surrounded by parcels on the north, south, and east that have the same zoning designation. The parcel directly west of the parcel site is zoned General Commercial. The project is consistent with this finding because it is the intent of the Mixed Use zoning district to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses. The project proposes a commercial service to serve the employees and residents of the area. Additionally, the project is a conditionally permitted use in this zoning district. The project is consistent with the development standards in the MXD zoning district in that it meets the front and rear setback requirements, F.A.R. requirement, maximum building height requirement and landscaping requirement. This project is also consistent with the request for Conditional Use Permit for the deviation from standards.

As mentioned before, the existing building is a legal non-conforming building in that it does not conform to the current development standards set forth in the Zoning Ordinance. However, the Zoning Ordinance does allow for deviation from the development standards with approval of a Conditional Use Permit.

4. The project is consistent with the Midtown Specific Plan.

The project is consistent with the Midtown Specific Plan, specifically:

- Policy 3.22: Encourage the provision of childcare services to support demand generated by employees and residents in the Midtown Area.

The project is consistent with this finding because the proposed child care facility will serve the childcare needs of the employees and residents in the Midtown Area. As previously mentioned, the Midtown Area is in a state of transition where greater densities and an increase in employment is anticipated. This will place a greater demand for childcare services within the City. By providing a child care facility within this transitional area, the childcare needs of employees and residents will be better served.

Exception to Standards (Section XI-10-6.07)

Exceptions to the Development Standards within the MXD zoning district may be made if the Planning Commission can make two additional findings.

- 1. In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:*
 - a. The exceptions meet the design intent identified within the Zoning District and/or Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.*

The exception to the Development Standard that the applicant is requesting is to allow for a zero foot (0) foot interior side setback requirement, where the standard is ten feet (10), and to allow the primary building entrance oriented towards the parking lot area instead of the street. The project is consistent with this finding because the project meets the design intent of the Midtown Specific Plan and does not detract from the overall architectural, landscape and design integrity of the proposed development. As previously mentioned, the Midtown Area is envisioned to be the “traditional downtown” area of the City and typically, traditional downtowns do not have an interior side setback requirement. Considering successful traditional downtowns such as Downtown Los Gatos, Downtown Mountain View and Downtown Palo Alto, interior side setback requirements are not observed. Generally speaking, most of the buildings in these areas are side by side without any interior side setbacks. Therefore, the project meets the design intent of the Midtown Specific Plan.

- b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.*

The project is consistent with this finding because a public benefit is obtained in that a child care use is provided to the employees that work within City limits and the residents of Milpitas. Given the growing residential and business population in Milpitas, there is a demand for additional child care facilities and this project will help meet the increase demands.

Minor Site Development Permit (Section XI-10-57.03(F))

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development;*

The project is consistent with this finding because the building façade improvements and landscape upgrades proposed do not change the overall design of the building or project site. These changes are intended to improve and renew the aesthetics of site while retaining the same character.

2. *The project is consistent with the Milpitas Zoning Ordinance;*

As discussed in detail above, the Project is consistent with the Milpitas Zoning Ordinance.

3. *The project is consistent with the Milpitas General Plan;*

As discussed in detail above, the Project is consistent with the Milpitas General Plan.

4. *The project is consistent with the Midtown Specific Plan.*

As discussed in detail above, the project is consistent with the Midtown Specific Plan.

Milpitas Child Care Master Plan

The project is consistent with the Milpitas Child Care Master Plan, specifically:

- Accessibility Guiding Principle 2.2-G-1: The City of Milpitas promotes the retention of existing and the development of new child care facilities within the City limits.

The project is consistent with this finding because it is promoting the development of a new child care facility within the City limits.

ENVIRONMENTAL REVIEW

The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15303 of the CEQA Guidelines, New Construction or Conversion of Small Structures. This project is covered under Section 15303 because it is considered a conversion of an existing small structure from one use to another where only minor modifications are made in the exterior of the structure. Additionally, this exemption also applies

to commercial buildings not exceeding 10,000 square feet in floor area and does not involve the use of significant amounts of hazardous substances.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on August 1, 2014. (Two Fridays before the meeting). In addition, 1,010 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall.

CONCLUSION

The project is requesting a Conditional Use Permit to allow for a child care use in the Mixed Use (MXD) zoning district; alteration of a legal non-conforming building and deviation from development standards; and, a Minor Site Development Permit for various building and site improvements. This project is consistent with the findings for a Conditional Use Permit, a Minor Site Development Permit, and the Milpitas Child Care Master Plan.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct Public Hearing; and
2. Adopt Resolution No. 14-031 approving Conditional Use Permit No. UP14-0011 and Minor Site Development Permit No. MS14-0028 to operate a preschool in an existing commercial building and to permit various building and site improvements located at 430 South Abel Street subject to the findings and Conditions of Approval.

ATTACHMENTS

A: Resolution 14-031

B: Site Plan, Floor Plans, Landscape Plan

C: Pick-up and drop-off schedule, Statement of operations, Program goals